

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAYON LIVELY,

Plaintiff,

v.

J. WOODFORD, et al.,

Defendants.

1:05 CV 0362 REC DLB P

ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND

Plaintiff is a state prisoner proceeding pro per and in forma pauperis with a civil rights action pursuant to 42 U.S.C. section 1983. Pending before the Court is plaintiff's complaint filed March 18, 2005. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2). If the court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment.

1 Lopez v. Smith, 203 F.3d 1122 (9<sup>th</sup> Cir. 2000) (en banc).

2 **A. Plaintiff's Allegations.**

3 Plaintiff names as defendants J. Woodford, Director of the California Department of  
4 Corrections; A. Scribner, Warden California State Prison Corcoran; Correctional Lieutenants. Hoyt,  
5 and Grandy; Correctional Sergeants Swetich and Martinez; and Correctional Officers Gonzales and  
6 Aguirre. Plaintiff alleges that defendants conspired to and did have him placed in administrative  
7 segregation for an unspecified amount of time by falsifying rules violation reports relating to a  
8 February 5, 2004 incident where a riot broke out between white and black inmates at California State  
9 Prison Corcoran (CSP COR). Plaintiff alleges that he was not involved in the riot but defendants  
10 falsified reports causing him to receive a Rules Violation Report and be placed in administrative  
11 segregation pending an investigation. Plaintiff states that the falsified report was written by  
12 defendant Gonzalez for which plaintiff received a "CDC 128 B." Plaintiff also alleges that in  
13 placing him in administrative segregation for an unspecified period of time defendants confiscated  
14 his personal property. He states that his gold chain, radio and television were inventoried and during  
15 transport his radio was damaged.

16 On February 19, 2004, plaintiff was adversely transferred from CSP COR to the California  
17 Substance Abuse Treatment Facility, Corcoran and again placed in administrative segregation  
18 apparently due to an ongoing investigation of charges unrelated to the February 5, 2004 incident.

19 On April 7, 2004, plaintiff received another Rules Violation Report alleging that he conspired  
20 to assault/murder an inmate. He alleges that the report, authored by defendant Hoyt, was falsified  
21 and he was subsequently found "not guilty" of the charges. While it is unclear, it appears that  
22 plaintiff remained in administrative segregation through the filing of his complaint on March 18,  
23 2005.

24 Plaintiff contends that during this process he was denied procedural due process in that the  
25 Classification Committee kept requesting extensions of time and it took eight months for the  
26 hearing. Plaintiff alleges that he utilized the institution's grievance procedure to attempt to gain his  
27 release back into general population, to no avail. He states that he wrote a letter addressed to  
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1 defendant Woodford's office with no success.

2 Plaintiff also alleges that the ISU officers convinced the Kings County Superior Court to issue  
3 a search warrant for his mother's house where a gun and marijuana were found resulting in her  
4 criminal conviction. Plaintiff alleges that this was done to make him suffer and that his retention in  
5 administrative segregation, coupled with the imprisonment of his mother created an atypical and  
6 significant hardship for him.

7 **B. Due Process Claims**

8 Plaintiff's allegations that his due process rights were violated in conjunction with his  
9 placement and retention in Ad-Seg are not cognizable under section 1983.

10 The Due Process Clause protects prisoners from being deprived of liberty without due  
11 process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to state a cause of action  
12 for deprivation of procedural due process, a plaintiff must first establish the existence of a liberty  
13 interest for which the protection is sought. Liberty interests may arise from the Due Process Clause  
14 itself or from state law. Hewitt v. Helms, 459 U.S. 460, 466-68 (1983). The Due Process Clause  
15 itself does not confer on inmates a liberty interest in being confined in the general prison population  
16 instead of administrative segregation. See Hewitt, 459 U.S. at 466-68. With respect to liberty  
17 interests arising from state law, the existence of a liberty interest created by prison regulations is  
18 determined by focusing on the nature of the deprivation. Sandin v. Conner, 515 U.S. 472, 481-84  
19 (1995). Liberty interests created by prison regulations are limited to freedom from restraint which  
20 "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of  
21 prison life." Id. at 484. Plaintiff is not entitled to procedural due process protections in a vacuum.  
22 In order to be entitled under federal law to any procedural due process protections, plaintiff must first  
23 have a liberty interest at stake.

24 Plaintiff has alleged no facts that establish the existence of a liberty interest in remaining free  
25 from Ad-Seg. Id.; see also May v. Baldwin, 109 F.3d 557, 565 (9th Cir. 1997) (convicted inmate's  
26 due process claim fails because he has no liberty interest in freedom from state action taken within  
27 sentence imposed and administrative segregation falls within the terms of confinement ordinarily  
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1 contemplated by a sentence) (quotations omitted); Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir.  
2 2000) (plaintiff's placement and retention in the SHU was within range of confinement normally  
3 expected by inmates in relation to ordinary incidents of prison life and, therefore, plaintiff had no  
4 protected liberty interest in being free from confinement in the SHU) (quotations omitted). Because  
5 plaintiff has not established the existence of a liberty interest in remaining free from Ad-Seg,  
6 plaintiff may not pursue a claim for relief under section 1983 for deprivation of procedural due  
7 process.

8 Plaintiff's additional allegations relating to his mother's imprisonment do not change the  
9 result. While the imprisonment of his mother may have caused plaintiff mental anguish, plaintiff has  
10 failed to identify a violation of his constitutional rights based on his mother's arrest and/or  
11 conviction.

12 Further, even if plaintiff had a liberty interest in remaining free from Ad-Seg, plaintiff has  
13 alleged no facts that support his claim he was deprived of the procedural due process protections he  
14 was due. It appears that plaintiff was informed of the reasons for his placement in Ad-Seg via the  
15 CDC-114 form and plaintiff was provided with periodic reviews following his placement in Ad-Seg.  
16 Thus, plaintiff received all the notice he was due regarding his placement in Ad-Seg, and all the  
17 process he was due regarding his retention in Ad-Seg. Toussaint v. McCarthy, 801 F.2d 1080, 1100-  
18 01 (9th Cir. 1986). Due Process does not require that plaintiff be provided with "detailed written  
19 notice of charges . . ." or "a written decision describing the reasons for placing the prisoner in  
20 administrative segregation," and "due process does not require the disclosure of the identity of any  
21 person providing information leading to the placement of a prisoner in administrative segregation."  
22 Id.

23 Moreover, with regard to the April 7, 2004 rules violation, the process obviously worked in  
24 that he was found "not guilty" of the charges.

25 Plaintiff also fails to state a cognizable claim under section 1983 with regard to his personal  
26 property. Plaintiff alleges that his personal property was destroyed. The Due Process Clause  
27 protects prisoners from being deprived of property without due process of law, Wolff v. McDonnell,

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1 418 U.S. 539, 556 (1974), and prisoners have a protected interest in their personal property. Hansen  
 2 v. May, 502 F.2d 728, 730 (9th Cir. 1974). However, plaintiff has not alleged any facts suggesting  
 3 that he was deprived of due process. As long as plaintiff was provided with process, prison officials  
 4 may deprive him of his property.

5 **C. Conspiracy**

6 To the extent plaintiff alleges that the named defendants conspired to remove him from  
 7 general population, place him in administrative segregation, deprive him of his personal property and  
 8 to imprison his mother, these allegations fail to state a claim under section 1983. In the context of  
 9 conspiracy claims brought pursuant to section 1983, such a complaint must “allege [some] facts to  
 10 support the existence of a conspiracy among the defendants.” Buckey v. County of Los Angeles, 968  
 11 F.2d 791, 794 (9th Cir. 1992); Karim-Panahi v. Los Angeles Police Department, 839 F.2d 621, 626  
 12 (9th Cir. 1988). Plaintiff must allege that defendants conspired or acted jointly in concert and that  
 13 some overt act was done in furtherance of the conspiracy. Sykes v. State of California, 497 F.2d  
 14 197, 200 (9th Cir. 1974).

15 Plaintiff has not alleged any facts supporting the existence of a conspiracy between  
 16 defendants. Further, plaintiff has not alleged facts demonstrating that defendants violated his  
 17 constitutional rights. In order to state a cognizable claim for relief for conspiracy, plaintiff must  
 18 establish that defendants conspired to violate an underlying constitutional right.

19 **D. Defendants Woodford and Scribner**

20 To the extent plaintiff names Woodford and Scribner as defendants based on their  
 21 supervisory positions, plaintiff is advised that under section 1983, liability may not be imposed on  
 22 supervisory personnel for the actions of their employees under a theory of respondeat superior.  
 23 When the named defendant holds a supervisory position, the causal link between the defendant and  
 24 the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858,  
 25 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.  
 26 941 (1979). To state a claim for relief under section 1983 for supervisory liability, plaintiff must  
 27 allege some facts indicating that the defendant either: personally participated in the alleged  
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1 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or  
 2 promulgated or “implemented a policy so deficient that the policy ‘itself is a repudiation of  
 3 constitutional rights’ and is ‘the moving force of the constitutional violation.’” Hansen v. Black, 885  
 4 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th  
 5 Cir. 1989). Although federal pleading standards are broad, some facts must be alleged to support  
 6 claims under section 1983. See Leatherman v. Tarrant County Narcotics Unit, 507 U.S. 163, 168  
 7 (1993).

8 Plaintiff has not alleged any facts indicating that defendants Woodford or Scribner personally  
 9 participated in the alleged deprivation of constitutional rights; knew of the violations and failed to  
 10 act to prevent them; or promulgated or “implemented a policy so deficient that the policy ‘itself is a  
 11 repudiation of constitutional rights’ and is ‘the moving force of the constitutional violation.’”  
 12 Hansen v. Black at 646. Further, “[A prison] grievance procedure is a procedural right only, it does  
 13 not confer any substantive right upon the inmates.” Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir.  
 14 1993) (citing Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza,  
 15 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals because no entitlement  
 16 to a specific grievance procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence  
 17 of grievance procedure confers no liberty interest on prisoner); Mann v. Adams, 855 F.2d 639, 640  
 18 (9th Cir. 1988). “Hence, it does not give rise to a protected liberty interest requiring the procedural  
 19 protections envisioned by the Fourteenth Amendment.” Azeez v. DeRobertis, 568 F. Supp. at 10;  
 20 Spencer v. Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986). Actions in reviewing prisoner’s  
 21 administrative appeal cannot serve as the basis for liability under a § 1983 action. Buckley, 997 F.2d  
 22 at 495.

### 23 **E. Conclusion**

24 In summary, the Court finds it necessary to dismiss the complaint in its entirety. The Court  
 25 will grant plaintiff an opportunity to amend to cure the deficiencies of this complaint. Failure to cure  
 26 the deficiencies will result in dismissal of this action without leave to amend.

27 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
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1 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy,  
2 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named  
3 defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some  
4 affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v.  
5 Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,  
6 588 F.2d 740, 743 (9th Cir. 1978).

7 In addition, plaintiff is informed that the Court cannot refer to a prior pleading in order to  
8 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended  
9 complaint be complete in itself without reference to any prior pleading. This is because, as a  
10 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d  
11 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer  
12 serves any function in the case. Therefore, in an amended complaint, as in an original complaint,  
13 each claim and the involvement of each defendant must be sufficiently alleged.

14 In accordance with the above, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's complaint is dismissed; and
- 16 2. Plaintiff is granted thirty days from the date of service of this order to file an  
17 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of  
18 Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket  
19 number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original  
20 and two copies of the amended complaint; failure to file an amended complaint in accordance with  
21 this order will result in dismissal of this action for failure to state a claim and failure to comply with  
22 the court's order.

23 IT IS SO ORDERED.

24 **Dated: September 23, 2005**  
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**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE